

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

THOMAS PASSARGE,	:	CASE NO. C-1-01-239
	:	
Plaintiff,	:	JUDGE SPIEGEL
	:	
v.	:	<u>PLAINTIFF'S MEMORANDUM IN</u>
	:	<u>OPPOSITION TO DEFENDANTS'</u>
SHAREFAX CREDIT UNION, INC., <i>et al.</i> ,	:	<u>MOTION FOR COSTS PURSUANT</u>
	:	<u>TO FEDERAL RULE OF CIVIL</u>
Defendants.	:	<u>PROCEDURE 54(d)(1)</u>

I. BACKGROUND

On July 23, 2003, the District Court, Judge S. Arthur Spiegel presiding, issued its Order granting Defendants' Motion for Summary Judgment as to Plaintiff's federal claims, dismissing those federal claims with prejudice, but dismissing without prejudice Plaintiff's remaining state law claims. The Order did not purport to award costs to any party.

Also, on July 23, 2003, a Judgment in a Civil Case was entered. Like the Order, the Judgment did not purport to award costs to any party.

On August 21, 2003, Plaintiff filed his Notice of Appeal. This case is currently pending in the United States Court of Appeals for the Sixth Circuit.

On September 3, 2003, Defendants filed a "Motion for Costs," purporting to "move this Court for a Bill of Costs in its favor in the amount of \$6,019.23."

II. ARGUMENT

Assuming costs may be taxed against Plaintiff, despite the fact that neither the Order nor Judgment authorized such to occur, Defendants' Motion is nevertheless unauthorized and premature and it must be denied.

Pursuant to S.D. Ohio R. 54.1, a request for an award of costs is to be made by way of a "bill of costs." When, as here, an appeal has been taken, the required bill of costs "is to be served and filed within fourteen (14) days after ... the date on which the judgment is final after all appeals." *Id.*(a) (emphasis added). In short, Defendants' request for costs has been made before the time specified in this Court's Local Rules and therefore must be denied as untimely.

In addition, Defendants' "motion" is unauthorized to the extent it purports to seek to have the District Court judge, here Judge Spiegel, make any ruling whatsoever with respect to Defendants' request for costs. Rule 54(d)(1) of the Federal Rules of Civil Procedure makes clear that the District Court's review of such a request occurs only after the Clerk acts on the request.^{1/} "On motion served within five days thereafter, the action of the Clerk may be reviewed by the Court." Fed. R. Civ. P. 54(d)(1) (emphasis added).

^{1/} Only after "a final judgment in favor of a party entitled to an award of costs has been entered by the Court" may taxation of costs occur. *Id.*

For each of the foregoing reasons, Defendants' Motion must be denied.

Respectfully submitted,

s/ Martin McHenry
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CERTIFICATE OF SERVICE

I hereby certify that on 14th day of October, 2003, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Michael S. Glassman, Esq., Trina Walton, Esq., Attorneys for Defendants, Dinsmore & Shohl, 255 East Fifth Street, 1900 Chemed Center, Cincinnati, OH 45202; I also faxed and mailed a copy to the following: Michael S. Glassman, Esq., Trina Walton, Esq., Attorneys for Defendants, Dinsmore & Shohl, 255 East Fifth Street, 1900 Chemed Center, Cincinnati, OH 45202.

s/ Martin McHenry
MARTIN McHENRY (0022543)